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DEC 16 2019

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR
AGENCY ACTION OF WESCO OPERATING
INC. FOR ORDERS AUTHORIZING THE
FLARING OF GAS FROM THE BLUE HILLS
GAS PLANT LOCATED IN THE SW¼SE¼ OF
SECTION 20, TOWNSHIP 23 SOUTH, RANGE
19 EAST, SLM, GRAND COUNTY, UTAH

**[PROPOSED]
INTERIM FINDINGS OF FACT,
CONCLUSION OF LAW AND
ORDER**

Docket No. 2019-027

Cause No. 194-03

This Cause came on for hearing on an expedited basis before the Utah Board of Oil, Gas and Mining (the “Board”) on Wednesday, December 11, 2019, at approximately 3:40 p.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah. The following Board members were present and participating at the hearing: Chairman Ruland J. Gill, Jr., Chris D. Hansen, Michael R. Brown, Gordon L. Moon, Susan S. Davis, Richard K. Borden and Stephen B. Church. The Board was represented by Michael Begley, Esq., Assistant Attorney General.

Participating and testifying on behalf of Petitioner Wesco Operating, Inc., (“Wesco”) were Steve Degenfelder – Landman, and Tom Kirkwood – Petroleum Engineer. Mr. Kirkwood was recognized by the Board as an expert in petroleum engineering for

purposes of this Cause. Frederick M. MacDonald, Esq., of and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as attorney for Wesco.

The Division of Oil, Gas and Mining (the "Division") did not file a staff memorandum in this Cause but participated in the hearing. Thomas Kessinger, Esq., Assistant Attorney General, appeared as attorney for, and, with the Board's authorization Dustin Doucet, Petroleum Engineer, asked questions on behalf of, the Division. At the conclusion of Wesco's presentation in chief, Mr. Kessinger expressed that the Division supported the granting of Wesco's Verified Request for Agency Action filed on November 26, 2019 (the "RAA"), as conformed to the testimony and other evidence provided at the hearing and on the interim basis as outlined below.

By Letter filed with the Board on December 4, 2019, the Utah School and Institutional Trust Land Administration ("SITLA"), Administrator of and Lessor under the State of Utah Leases pursuant to which Wesco in part produces the gas which is at issue in this Cause, expressed its support for granting of the RAA. However, no one from SITLA made an appearance at the hearing.

No other party filed a response to the RAA and no other party appeared of participated at the hearing.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised and for good cause, hereby makes the following Interim Findings of Fact, Conclusion of Law and Order in the Cause.

FINDINGS OF FACT

1. Wesco is a Wyoming corporation in good standing, with its principal place of business in Casper, Wyoming, and is duly authorized to conduct business in the State of Utah. It is duly bonded with all appropriate State of Utah and Federal agencies relative to this Cause.
2. The Blue Hills Gas Plant is located in the SW¹/₄SE¹/₄ of Section 20, T23S, R19E, SLM, Grand County, Utah (the "Plant"). It is owned by Kirkwood Oil & Gas, LLC ("Kirkwood") and Nerd Gas Company LLC ("Nerd"), and is operated by Wesco on their collective behalf.
3. The Plant treats and compresses for delivery to interstate pipeline residual gas produced from eighteen (18) oil wells in and nearby the Cane Creek Federal Unit, located approximately fifteen (15) miles southeast of the Plant, for which Wesco also serves as Operator. Y-Grade natural gas liquids ("NGL's") are also stripped at the Plant and trucked off for sale.
4. The Plant is connected to the interstate pipeline through intrastate Greentown Pipeline (the "Pipeline") purportedly currently operated by Dead Horse Oil LLC ("Dead

Horse”). Neither Kirkwood, Nerd nor Wesco have any ownership in the Pipeline and may only transport gas through it in accordance with a transportation agreement in place with the owners/operator of the Pipeline.

5. As evidenced by Exhibit “A” admitted into evidence, by Notice of Hazardous Facility Order issued on April 10, 2019 by the Utah Public Service Commission (“PSC”), Pacific Energy & Mining Company (“PEMC”), Dead Horse’s purported predecessor, had numerous unresolved violations of Federal pipeline regulations and, as a consequence, was fined and ordered to cease operations of the Pipeline within 60 days unless the violations were remedied and PEMC petitioned the PSC to revoke the Order.

6. As evidenced by Exhibit “B” admitted into evidence, by Notice of Hazardous Facility Order, Order to Provide Confirmation of Compliance, and Action Request to the Division of Public Utilities (“DPU”) issued by the PSC on June 14, 2019, and as evidenced by Exhibit “C” admitted into evidence, in a July 9, 2019 Response filed by the DPU, the DPU conducted a physical inspection of the Pipeline on June 11, 2019, which confirmed the violations contained in the April 10, 2019 Order by the PSC had not been remedied.

7. On June 10, 2019, the date the Pipeline was ordered to be shut-in if the violations outlined in the PSC’s April 10, 2019 Order were not timely remedied, Wesco placed the Plant into recycle and began to flare to ensure no damage to the Plant when the Pipeline was shut-in. The following day DPU inspectors arrived at the Plant to ensure that

no gas was flowing from the Plant to the Pipeline. Subsequently, Wesco discovered a lock had been placed on the transmission's valve by an unknown party, clearly constituting circumstances beyond the reasonable control of Wesco. The Division and the Moab Field Office of the Bureau of Land Management ("BLM") were immediately advised by Wesco of the situation and expressed no concern over the flaring given the circumstances.

8. When allocated back to each well, the amount of gas flared initially was below the regulatory amount applicable to an individual oil well of 1800 Mcf per month (approx. 60 Mcf per day) as set forth in Utah Admin. Code Rule R649-3-20(1.1).

9. However, at the end of August, 2019, Wesco reworked the CCU 36-1 Well due to a fish in the hole, which increased the daily allocated gas production to between 70-80 Mcf per day, which exceeds the regulatory amount for an individual oil well. In addition, the additional gas through the Plant spread out fuel allocation which increased the CCU 12-1 Well's allocated gas production in excess of 60 Mcf per day. Wesco, in good faith, believed, based upon prior declines in these Wells, that the gas production would tail off to an allocated amount below the regulatory amounts per well, but that has not occurred. During September, the aggregate amount of gas flared at the Plant was approximately 221 Mcf per day. Upon discovery, the Division and the BLM were both apprised of the situation by Wesco.

10. At the beginning of this process, Wesco and, to the best of Wesco's knowledge, also the Division and the BLM, believed, in good faith, that the PSC shut down of the Pipeline would be of a "very limited temporary nature" (as these terms are utilized in Utah Admin. Code Rule R649-3-20(8)), the issues would be timely resolved, and the Pipeline placed back into service, but, to date, that has not occurred.

11. On November 12, 2019, the Division directed Wesco to request Board approval to continue flaring at the Plant until the PSC orders the Pipeline to be placed back in service.

12. The flare Wesco is utilizing at the Plant is an engineered flare manufactured by UOP and was designed to meet all applicable Federal, State and local codes, including OSHA, ASTM, ASME, ANSI, API, NEC, NACE, AISC and TCEQ. The maximum design rate is 9MMcf per day with a continuous ignition system. The flare is located ~100 ft. Northeast of the Plant in an area kept free from vegetation. There are no businesses or residences located within one mile of the flare.

13. As evidenced by Exhibit "D" admitted into evidence and Mr. Kirkwood's testimony, the gas is primarily composed of methane, ethanol, and propane. The propane and heavier elements are converted to NGL's before flaring. It is estimated that the flare is burning over 99% of the residual gas.

14. Approximately 150 Mcf of the gas sent to the Plant is used to operate compressors, refrigeration system and generators.

15. Wesco is accounting for and paying production proceeds on the gas being flared in accordance with the indexed – based option of the Federal non - arm's length valuation regulations.

16. Although the evidence reflects flaring rates have not averaged above 221 Mcf per day, allowing flaring up to 400 Mcf per day provides flexibility for fluctuations in production on an actual day to day basis.

17. The Board is cognizant of the previous testimony provided in other Cane Creek Units well flaring hearings in the Cause No. 196 series, and in particular Cause No. 196-44. As evidenced thereby and through Mr. Kirkwood's testimony, neither choking back nor shutting-in the wells is a viable option because: a) economic waste would occur by cutting off the revenue streams generated by the oil and NGL's; and b) physical waste may occur due to potential damage to the reservoir and to wells and equipment resulting from salts tending to drop out. Furthermore, there is no guaranty the wells would produce to rates before the shut-in or choke back.

18. Although Mr. Kirkwood testified that, as the multi-million-dollar Plant and gathering system were specifically constructed to deal with the residual gas from the Cane Creek Unit area wells, no other practical solution other than flaring exists pending the

Pipeline being placed back into service, Wesco has not provided any economic analyses relating to other options for dealing with the gas in lieu of flaring at the Plant, similar to that required under Utah Admin. Code Rules R649-3-20(5.5 and 5.7) for individual wells.

19. The flaring of gas at the Plant constitutes waste but is beyond the reasonable control of Wesco, Resolution is entirely dependent upon the PSC's jurisdiction and rulings on the Pipeline.

20. A hearing is scheduled for December 19 and 20, 2019 before the PSC concerning the Pipeline. Prior to that hearing, the Board desires to issue a resolution advising the PSC of the Board's statutory obligation to avoid waste, and, in furtherance thereof, to strongly encourage the PSC to take immediate measures to place the Pipeline back in service and not order it permanently out of service.

21. A copy of the RAA was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to the addresses disclosed by searches of the respective BLM, SITLA, and Grand and San Juan County Records, and based on Wesco's internal records, to all production interest owners in the 18 wells from which the gas being flared is produced. Copies of the return receipts, evidencing receipt of such mailings, or of the USPS status inquiries of those mailings for which no return receipt or mailing had yet been received, were admitted into evidence as Exhibit "Z."

22. Given the expedited basis of the RAA and hearing, no notice has yet been published.

23. In light of Findings of Fact Nos. 18, 21 and 22 above, an interim order, allowing flaring at the Plant to confirm at a rate not to exceed 400 Mcf per day until January 30, 2020, the day after the next scheduled meeting of the Board is fair and reasonable. At said hearing Wesco may, by electronic participation, present the economic analyses desired by the Board and to address any matter raised by a timely response to the RAA filed in the interim.

24. The vote of the Board members present in the hearing and participating in this Cause was unanimous (7-0) in favor of authorizing the flaring of gas from the Plant at a rate not to exceed 400 Mcf per day until January 30, 2020 and subject to the other caveat outlined in Findings of Facts Nos. 20 and 23 above.

CONCLUSIONS OF LAW

1. The hearing was properly held in response to the Emergency Order issued by the Board on November 27, 2019 in this Cause and in accordance with Utah Admin. Code Rules R641-109-400 and R649-10-7.

2. The Board has jurisdiction over all matters covered by the RAA and all interested parties herein, and has the power and authority to render the order herein set

forth pursuant to Utah Code Ann. § 40-6-5(3)(f) and Utah Admin. Code Rules R641-109-400, R649-2-1 and R649-10-7.

3. While service of the RAA has been provided by Wesco to all parties whose legally protected interests are affected by the RAA in the form and manner as required by law and the rules and regulations of the Board and Division, publication has not yet been provided as required by said rules and regulations.

4. The Board takes judicial notice of the testimony and exhibits admitted into evidence in the Cause No. 196 series of flaring matters, and in particular Cause No. 196-44, pursuant to Utah Code Ann. § 63G-4-206(1)(b)(iv).

5. Wesco has complied with the requirements of Utah Admin. Code Rule R649-3-20(8) and (9).

6. Waste is occurring by the flaring of the gas at the Plant, in contravention of Utah Code Ann. § 40-6-3, but is beyond the reasonable control of Wesco.

7. Suspension of Utah Admin. Code Rule R649-3-20(8) by virtue of the interim nature of this Order is just and reasonable under the circumstances.

8. Wesco has sustained its burden of proof, demonstrated good cause and satisfied all legal requirements for the granting of the RAA as conformed to the testimony and other evidence provided at the hearing and on the interim basis set forth herein.

ORDER

Based upon the RAA, testimony and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders:

1. The Board hereby authorizes Wesco to flare gas at the Plant at a rate not to exceed 400 Mcf per day through to January 30, 2020, superseding the application of Utah Admin. Code Rule R649-3-20(8) for that period.

2. The Board Secretary is directed to publish notice that the RAA will be heard by the Board at its next regularly scheduled hearing on January 29, 2020 in the form and manner required by Board and Division rules and regulations.

3. The Board's counsel is directed to prepare and submit for the Chairman's signature and to deliver to the PSC no later than December 18, 2019 a resolution from the Board outlining the Board's statutory duty to prevent waste and, in furtherance thereof, to strongly encourage the PSC to take immediate measures necessary to place the Pipeline back in service and not permanently order it out of service.

4. At the January 29, 2020 hearing, Wesco, through authorized electronic participation, is to provide testimony addressing the economic analyses of other options in lieu of flaring to deal with the gas until the Pipeline resumes operations, similar to that required under Utah Admin. Code Rule R649-3-20(5.5 and 5.7) for individual wells, and to address any matters raised by a response to the RAA timely filed in the interim. At the

conclusion of that hearing, and depending upon the evidence provided, the Board may authorize flaring at the Plant on a periodic basis or until the PSC issues an Order authorizing resumption of operations of the Pipeline or require alternative options to be implemented by Wesco.

5. Pursuant to Utah Admin. Code Rule R641 and Utah Code Ann. § 63G-4-204 to 208, the Board has considered and decided this matter as a formal adjudication.

6. This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63G-4-208 and Utah Administrative Code Rule R64-109.

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63G-4-208 - (g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code Ann. §§ 63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final

agency action of the Board. Utah Code Ann. § 63G-4-302, entitled, “Agency Review – Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such

petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

9. For all purposes, the Chairman's signature on an electronic version or a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this ____ day of _____, 2019.

**STATE OF UTAH
BOARD OF OIL, GAS AND MINING**

By: _____
Ruland J. Gill, Jr., Chairman

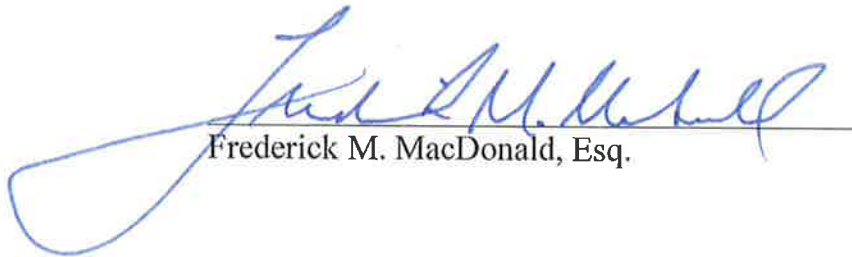
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2019, I caused a true and correct copy of the foregoing Proposed Interim Findings of Fact, Conclusion of Law and Order, to be mailed, postage pre-paid, and sent electronically to the following:

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